

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Barrier Free Subcode

Proposed Amendments: N.J.A.C. 5:23-6.31, 7.3, 7.5, 7.7, 7.9, and 7.10

Authorized by: Susan Bass Levin, Commissioner, Department of Community Affairs

Authority: N.J.S.A. 52:27D-119 et seq.

Calendar: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-

Submit written comments by February 3, 2004 to:

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SUSAN BASS LEVIN, Commissioner

The agency proposal follows:

Summary

At N.J.A.C. 5:23-6.31(o), N.J.A.C. 5:23-7.5(f), and N.J.A.C. 5:23-7.10(b), this rule amendment would provide that when an assisted living facility makes apartments or rooms that were constructed as adaptable available for respite care (short-term stays), the

apartments or rooms that are made available for short-term stays be made accessible. Like apartments in multi-family dwellings, apartments in assisted living facilities are required by the Barrier Free Subcode to be constructed with adaptable features in the kitchens and bathrooms. Some assisted living facilities are making vacant apartments available for short-term stays, but have not been providing the accessible building features in the rooms of guests who are wheelchair users. These accessible building features include installing grab bars at the bathtub or removing the vanity from under the lavatory in the bathroom to ensure sufficient turning radius. This rule amendment would require that the adaptations be made before a dwelling unit or room in an assisted living facility is offered for rent on a short-term basis.

The International Residential Code (IRC), which is adopted as the one- and two-family dwelling subcode of the Uniform Construction Code, contains a definition of a townhouse. This definition includes the provision that a townhouse extends from foundation to roof. This provision would be added to the Barrier Free Subcode at N.J.A.C. 5:23-7.3(b) to ensure that "townhouse" has a common definition and application throughout the Uniform Construction Code.

Questions have arisen about whether the Barrier Free Subcode addresses partywalls. In the interest of completeness and clarity, at N.J.A.C. 5:23-7.3(b)2i, this rule amendment would provide that the term "partywall" be made part of the Barrier Free Subcode.

Both the Federal Fair Housing Amendments Act, in its definitions at 24 CFR 100.201, and the Americans with Disabilities Act (ADA), in its section on transient accommodations, apply to dormitories. The Federal Fair Housing Amendments Act requires that in elevator-serviced dormitories, all rooms must be adaptable, whereas in dormitories without an elevator, ground floor rooms must be adaptable. The ADA requires that dormitories meet the table of accessible rooms required in hotels, motels, and other facilities that provide transient accommodations. In addition to these Federal laws, schools that receive Federal funding (which includes Federally subsidized financial aid) are required to comply with Section 504 of the Rehabilitation Act of 1973. In the Uniform Federal Accessibility Standards (UFAS), which are the design standards for buildings constructed under Section 504 of the Rehabilitation Act of 1973, five percent (5%) of the dorm rooms are required to be accessible. To ensure that the Barrier Free Subcode is at least as stringent as the Federal accessibility laws, this rule proposes that 5% of the dormitory rooms would be required to be accessible. It further proposes that of the remaining 95% of the rooms, all ground floor rooms must be adaptable if there is no elevator in the building and all rooms (100%) must be adaptable if there is an elevator. The term "educational facilities" used in this rule amendment applies to dormitory rooms at independent or private boarding schools in addition to those at colleges and universities.

N.J.A.C. 5:23-7.7(a) would be revised to state unambiguously that the entrance used by the general public must be accessible. This rule amendment would ensure that, in new construction, the primary entrance is the one that is made accessible.

At N.J.A.C. 5:23-7.9, the fine for violating the restrictions on an accessible parking space, which was increased by statute last year, is changed to reflect the amount of the fine in P.L. 2003, c.161.

N.J.A.C. 5:23-7.10(b)3 would be amended to include boarding homes, which are not specifically mentioned in the Barrier Free Subcode, but which are subject to the Federal Fair Housing Amendments Act. This reference to boarding homes is made to ensure clarity and completeness.

At N.J.A.C. 5:23-7.10(c), the table for accessible hotel rooms is amended to include Not Applicable (N/A) abbreviations where there is no requirement, to delete the statement at N.J.A.C. 5:23-7.10(c)1 that hotels with more than 50 guest rooms must comply with the table provided. This is being deleted because the charging text at N.J.A.C. 5:23-7.10(c) states that the table applies to hotels with six or more guestrooms and the table begins with a category of 1-25 rooms, so the text at N.J.A.C. 5:23-7.10(c)1 is unnecessary. In addition to this change, there is a new section that defines the kind of bed that must be provided in an accessible hotel guestroom. People with disabilities who rely on a lift for transfer from their wheelchair to the bed need to be able to position the lift under the bed. This rule amendment establishes a requirement for clear space under the bed; it also establishes a height for the lowest level of the bed frame to ensure that the lifts that are used will fit under the bed. This rule will ensure that people with disabilities can use accessible rooms that are required to be provided.

Social Impact

The social impact of these rules is expected to be positive. The changes are expected to add clarity of language and thereby to enhance the uniformity of enforcement of the Barrier Free Subcode. In addition, the provision that hotels with accessible guestrooms provide accessible beds will allow people with disabilities greater opportunity to use the facilities.

Economic Impact

The economic impact of these rules is not expected to be great. The dimensions that are required for accessible beds allow the use of a standard bed. Educational facilities have been required to meet Federal law in the provision of accessible rooms in dormitories, so this amendment does not constitute a change in their requirements.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements. Although Federal and State requirements for accessibility are separate, the proposed amendments are expected to have a positive impact by providing

the same scoping requirements for the accessibility of dormitories in State law as exist in the Uniform Federal Accessibility Standards.

Jobs Impact

The Department does not expect that any jobs would be created or lost as a result of these proposed amendments.

Agricultural Industry Impact

The Department does not expect that these proposed amendments would have an impact on the agricultural industry.

Regulatory Flexibility Statement

The proposed amendments would not impose any recordkeeping or reporting requirements on "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirements described in the Summary above may have a modest financial impact on assisted living facilities, schools, boarding homes, and hotels, which may be small businesses. However, small businesses must be held to the same standards as any other entity to protect the health, safety, and welfare of the public. Therefore, there is no basis for differential treatment of small businesses. No additional professional services would be required as a result of these proposed amendments.

Smart Growth Impact

The Department does not anticipate that the proposed amendments would have any impact upon either the achievement of "smart growth" or implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions in bold face **thus**; deletions indicated in brackets [thus]).

5:23-6.31 Change of Use

(a) - (n) (No change.)

(o) Accessibility Requirements: The following accessibility requirements shall apply in changes of use:

1. - 4. (No change.)

5. When an assisted living facility that was constructed with adaptable dwelling units or rooms pursuant to N.J.A.C. 5:23-7.5(f) because it provided accommodations for stays of 30 or more consecutive days makes any of those dwelling units or rooms available for less than 30 consecutive days, 50 percent (50%) of the accommodations or rooms made thus available shall be made fully accessible. The work needed to make those units accessible shall be completed and approved before any occupancy of less than 30 days.

5:23-7.3 Exceptions

(a) (No change.)

(b) The following residential buildings or structures shall not be required to comply with the provisions of the subchapter:

1. Townhouses;

i. For the purposes of applying this exemption, a townhouse shall be a single dwelling unit with two or more stories of dwelling space, exclusive of basement or attic, **where each dwelling unit extends from foundation to roof**. The dwelling unit shall have an independent entrance that shall serve one dwelling unit only at or near grade; most or all of the sleeping rooms shall be on one story; and most or all of the remaining habitable space, such as kitchen, living, and dining areas, shall be on another story; or

2. Buildings of [Use] Group R-2, R-3, or R-4 with one, two, or three dwelling units in a single structure;

i. For the purposes of determining the number of dwelling units in a single structure, firewalls **or partywalls** shall not constitute separate buildings.

(c) (No change.)

5:23-7.5 Residential buildings other than Group R-1

(a) - (e) (No change.)

(f) Assisted living facilities that are [designated as] **licensed by the Department of Health and Senior Services shall be** Group I-2 for the purposes of **compliance with the building subcode,** [and] fire protection subcode [compliance] **and compliance with the other subcodes of the Uniform Construction Code** shall be [considered as] Group R-2 for the purposes of accessibility **as provided at N.J.A.C. 5:23-7.10 below**.

(g) In each dormitory that is owned and operated by an educational facility, five percent (5%) or fraction thereof (rounded to the next higher whole number) of the sleeping rooms or suites shall be accessible. Accessible rooms or suites shall be dispersed and shall be provided throughout all types of rooms. When determining the dispersal of accessible dormitory rooms or suites, factors to be considered shall include location, dwelling unit type, room size, amenities provided, and number of beds provided. The remainder of the sleeping rooms or suites shall be adaptable.

1. Each toilet and bathing facility serving an accessible room shall comply with N.J.A.C. 5:23-7.11(a).

2. Each toilet and bathing facility serving an adaptable room shall be comply with N.J.A.C. 5:23-7.5.

3. All common use facilities, including, but not limited to, toilet facilities, bathing facilities, laundry areas, mailboxes, meeting rooms, and recreation rooms, shall be accessible.

Redesignate (g) as (h) (No change in text.)

5:23-7.7 Accessible building entrances

(a) For buildings or structures required by this subchapter to be accessible, at least 50 percent of the entrances, but not fewer than one entrance, shall be accessible and shall comply with the provisions of this subchapter. **The primary entrance(s) used by the general public shall be accessible.**

5:23-7.9 Accessible parking

(a) - (f) (No change.)

(g) Each accessible parking space shall be marked with an R7-8 sign from the Manual of Uniform Traffic Control Devices and shall display the international symbol of accessibility. Beneath the R7-8 sign, each accessible parking space shall also be marked with an R7-8P sign, as required by N.J.S.A. 39:4-198, containing the following language:

PENALTY

[\$100] **\$250** FIRST OFFENSE

SUBSEQUENT OFFENSES

[\$100] **\$250** MINIMUM AND/OR

UP TO 90 DAYS COMMUNITY SERVICE

TOW AWAY ZONE

1. - 2. (No change.)

5:23-7.10 Requirements applicable to specific nonresidential groups and Group R-1

(a) (No change.)

(b) Occupancies of Group I shall be accessible as follows:

1. - 2. (No change.)

3. In [buildings or portions thereof] **residential health care facilities** of Group I-1[, including residential health care facilities] that are licensed by the Department of Health and Senior Services, **and in buildings or portions thereof of Group I-1 used as boarding homes,** four percent (**4%**) or fraction thereof (rounded to the next higher whole number) of the resident bedrooms, including toilet or bathing facilities that serve these bedrooms, shall be accessible.

4. - 5. (No change.)

6. Assisted living facilities that are licensed by the Department of Health and Senior Services are Group I-2 for the purposes of [the] building subcode, [and] fire protection [design and construction, but] **subcode compliance, and compliance with the other subcodes of the Uniform Construction Code,** shall be [considered] Group R-2 for the purposes of [determining] accessibility [requirements], **where those dwelling units or rooms are available for occupancy only for 30 or more consecutive days.**

i. **When dwelling units or rooms are available for occupancy for less than 30 consecutive days, 50 percent (50%) of those dwelling units or rooms**

shall be fully accessible and shall include one fully accessible bathroom and, where a kitchen is provided, a fully accessible kitchen.

ii. In dwelling units in an assisted living facility **that are designated Group R-2 for the purposes of accessibility, the following may be adaptable:**

(1) the threshold for an accessible transfer shower may be adaptable as long as the shower threshold can be adapted with minimal expense and effort to be accessible[.]; **and**

(2) [In dwelling units in an assisted living facility] a transfer-type shower of 36 inches by 48 inches that [provides a] **includes an accessible** seat may be provided in individual dwelling units. The threshold of this shower shall not exceed four inches.

(c) In occupancies of Group R-1 containing six or more guestrooms, accessible guestrooms shall be provided in accordance with Table C-1 below.

[1. In occupancies of Group R-1 with more than 50 guestrooms, accessible guestrooms shall be provided in accordance with Table C-1 below:]

Table C-1		
Accessible Guestrooms and Roll-In Showers		
Number of Rooms	Accessible Rooms	Roll-In Showers
1-25	1	<u>N/A</u>
26-50	2	<u>N/A</u>
51-75	3	1
76-100	4	1
101-150	5	2
151 - 200	6	2
201 - 300	7	3
301- 400	8	4
401- 500	9	4 plus 1 for each additional 100 over 400
501 - 1000	2 percent of total	
1,001 and up	20 plus 1 for each 100 over 1,000	

1. Each accessible guestroom shall provide an accessible bed, as follows. To allow for the use of a transfer device, the accessible bed shall be a minimum of six and one-half (6 1/2) inches clear from the floor to the lowest level of the bed frame. Adjacent to the bed there shall be clear floor space that meets the requirements of ICC/ANSI A117.1, Section 305. A platform bed shall not be allowed.